



U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: EAC-98-073-50126 Office: Vermont Service Center

Date: JUN 9 2000

IN RE: Petitioner:
Beneficiary

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:

Public Copy

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:


This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Terrence M. O'Reilly, Director
Administrative Appeals Office

JUN 09 2000 - 047203

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), in order to serve as a full-time youth group pastor. The director denied the petition finding that the petitioner failed to establish that she had been continuously carrying on a religious occupation for at least the two years preceding the filing date of the petition.

On appeal, counsel for the petitioner argued that a mistake was made in denying the petition on the basis that she did not have the required amount of weekly hours. Counsel further states that the petitioner is an ordained minister and member of the clergy who has devoted her life to the church. Additional documentation containing a modified description of the petitioner's job title and duties have also been submitted.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2000, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2000, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year

period described in clause (i).

The petitioner is a twenty-five year old female native and citizen of Korea who was last admitted to the United States on June 15, 1993, as a B-2 visitor. The record reflects that the petitioner remained beyond her authorized stay and has resided in the United States since such time in an unlawful status. The petitioner claimed that she has never been employed in the United States without authorization. The petitioner further stated that she has been a member of the church and has been volunteering her services with the church since 1995. The petitioner claimed that she received a degree in Theology from the "New York United Project of Theology" in May 1997, and submitted a certificate of graduation. The petitioner further claimed that she is an ordained minister, and submitted a letter of ordination from "the General Assembly of Presbyterian Church, Inc."

The record has been reviewed de novo. The statute provides for three distinct classifications of religious workers: ministers of religion, professional workers, and other workers. Each has different eligibility requirements. For all three classifications the statute requires that the alien have been continuously carrying on the religious vocation or occupation specified in the petition for at least the two years prior to filing. Section 101(a)(27)(C)(iii) of the Act. In the case of special immigrant ministers, it was held in Matter of Faith Assembly Church, 19 I&N 391 (Comm. 1986) that the alien must have been engaged solely as a minister of the religious denomination for the two-year period.

The provisions of section 101(a)(27)(C) of the Act are phrased in general terms in order to accommodate the diversity among religious denominations and their various traditions of religious vocations and occupations. A determination of the classification sought must first be established in order to determine the appropriate standards under which to evaluate the prior experience requirement. The petitioner bears the burden to identify the classification sought, although, it is noted that declaration of the classification sought is not provided for on the Form I-360 petition itself.

8 C.F.R. 204.5(m)(2) defines the following terms for the purpose of special immigrant classification of religious workers:

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

Religious occupation means an activity which relates to

a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

Religious vocation means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

It is noted that the petitioner has inconsistently referred to the proffered position as that of youth pastor, youth group pastor, youth minister, youth group minister, and simply pastor. The petitioner initially submitted a position description which involved only administering religious education programs, planning congregational youth activities, and counseling. On appeal, the petitioner states that she is a minister and submits a modified description of her expanded duties as follows:

[The petitioner] will be responsible for conducting religious worship and performing other religious and spiritual functions and spiritual support and guidance to the members of our congregation; in church as well as in home visits when required. In addition, [the beneficiary] will perform wedding, entering the christian ministry, preaching the Gospel as well as Youth Group, Pastoral Care, Funerals, and Church administration.

A petitioner must establish eligibility at the time of filing. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. See Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971). Additionally, a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements. Matter of Izumii, Int. Dec. 3360 (Assoc. Comm., Ex., July 13, 1998). Accordingly, the petitioner's modification of the job title and description may not overcome the grounds for denial of the petition.

The center director addressed the petition as a request for classification of the petitioner as a lay person in a religious occupation. The director found that the petitioner had not provided adequate documentation establishing that she had the two years of qualifying experience in a religious occupation. On appeal, counsel argues that the petitioner is an ordained minister and further states that she "...is a member of the clergy and not

simply a volunteer at a church...who has devoted her life to the church." Despite the inconsistencies mentioned above, the case will be reviewed under the ministerial provision at section 101(a)(27)(C)(ii)(I) of the Act.

In order to establish eligibility for classification as a special immigrant minister, the petitioner must satisfy the eligibility requirements set forth in the regulations. The petitioner first must establish that she is qualified as a minister of religion for the purpose of special immigrant classification pursuant to 8 C.F.R. 204.5(m)(2).

The regulation defines a minister as an individual duly authorized to perform the functions of a member of the clergy of a given religious denomination. The regulations are silent regarding the documentary requirements for establishing status as a duly authorized minister within a denomination. The Service interprets its own regulation to require documentation from the religious organization showing the standards for ordination set by the governing authority of the denomination and proof that an alien seeking classification as a minister has satisfied those standards.

In this case, the petitioner has advanced inconsistent testimony. It was stated that she has been a youth group teacher/pastor with the church since 1995, and that she did not receive her degree in Theology until May 1997, and was not ordained as a minister until December 1997. The record contains no evidence of the church's standards for ordination of members of the clergy. In order to establish eligibility for special immigrant classification as a minister a petitioner must do more than merely confer the title on an individual. In Matter of Rhee, 16 I&N Dec. 607 (BIA 1978), the Board of Immigration Appeals (BIA) held that simply producing documents purported to be "certificates of ordination," which are not based on theological training or education, is not proof that an alien is entitled to perform the duties of a minister or pastor. Based on the absence of a clear standard for recognizing ministers within her church, and proof that the petitioner has satisfied those standards, it must be concluded that the petitioner has failed to establish that she is a minister.

The petitioner also must demonstrate that she had been continuously carrying on a religious vocation for at least the two years preceding filing of the petition.

8 C.F.R. 204.5(m)(1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on January 13, 1998. Therefore, the

petitioner must establish that she had been continuously carrying on the vocation of a minister of religion for at least the two years from January 13, 1996 to January 13, 1998.

As noted above, the petitioner has not established that she is a minister of religion for the purposes of this proceeding. The petitioner has inconsistently referred to her prior voluntary position with the church as that of youth group teacher, youth pastor, and finally, Sunday youth group minister. The petitioner's prior position duties are described as teaching bible studies to children and teaching gospel and hymns in the worship service to adults. The functions of this position have not been shown to constitute carrying on the vocation of a minister. Further, even if the Service were to accept the claim that she is qualified as a minister, the petitioner stated that she completed her training in May 1997 and was "ordained" in December 1997. Therefore, she has not been working as a minister since at least January 1996.

In order to be eligible for special immigrant classification as a minister, the statute requires that the alien have been continuously carrying on the vocation for the two years prior to filing and that he or she seeks admission solely for the purpose of carrying on the vocation of a minister of that religious denomination. See Section 101(a)(27)(C) of the Act. In Matter of Faith Assembly Church, 19 I&N Dec. 391 (Comm. 1986), it was further held that the alien must have been engaged solely as a minister of the religious denomination for the two-year period.

For a non-ministerial position, the regulatory definition of a qualifying job offer at 8 C.F.R. 204.5(m)(4) explicitly requires that the position be remunerated and requires a disclosure of the terms of remuneration. Since the statute requires two years of experience in the position for which classification is sought, the Service interprets that provision to require that the two years of prior experience in a professional or non-professional capacity must have been salaried employment. Accordingly, incidental and unspecified amounts of volunteer activities do not constitute qualifying work experience in a religious occupation. As noted in the director's decision, it was not adequately established that she had performed the services on a full-time basis. In treating the proffered position as a religious occupation, it should be noted that the petitioner only has experience as a youth group teacher and not as a pastor. Additionally, this teaching experience is for an unsubstantiated amount of time without remuneration. Therefore, it can also be concluded that the petitioner has failed to establish that she has been carrying on a religious occupation for the requisite period.

In the case of a ministerial position, the same regulation does not require disclosure of the terms of remuneration. The regulation instead requires a showing that the petitioner will be solely carrying on the vocation of a minister. This is in recognition of the tradition in many religious denominations that clergy persons

are not employed, *per se*, having taken vows of poverty. Such persons are, however, financially supported and materially sustained by the denomination or particular institution they serve. The Service therefore requires that the two years of prior experience in a ministerial capacity have been supported in the same manner for which classification is sought. This can be in the form of direct remuneration or in the form of indirect support and sustenance.

The petitioner in this case seeks classification in order to serve as a minister at a salary of \$20,000 per year. The petitioner's claimed past services were performed without compensation. An affidavit from the petitioner was submitted which stated that she has been supporting herself on savings earned in Korea. The petitioner's volunteer service time as a youth group teacher was identified as week-night and weekend hours, for an unsubstantiated total amount of time per week, leaving ample opportunity for her to engage in secular employment. Performing voluntary services while engaged in secular employment, or being supported directly by members of the congregation, or by family members is not considered carrying on the vocation for a religious organization.

If the petitioner's activities during the two-year period for which continuous experience is required were not solely those of a minister, even though the alien is an ordained minister, the alien is not considered to have been continuously carrying on the religious vocation of a minister for the two-year period. Matter of Varughese, 17 I&N Dec. 399 (BIA 1980). While the petitioner claims the church recognizes her as a minister, the record does not reflect that her claimed voluntary services were primarily functions of a minister. Accordingly, the petitioner has failed to establish that she has the required two years of experience in the proffered position.

Administrative notice is made that the petition is deficient on additional grounds. A religious organization must submit its federal tax returns, audited financial statements, or annual reports to establish its ability to pay the proffered wage.

8 C.F.R. 204.5(g)(2) states, in pertinent part, that:

Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

The petitioner submitted unaudited 1996 and 1997 financial

statements of the religious organization in the Korean language. These statements do not satisfy the documentary requirements. Therefore, the petitioner has not established the ability of her church to pay the wage.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.